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BLAKELY SOKOLOFF TAYLOR & ZAFMAN, LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

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SEP 02 2008

In re Application of :
John Michael Jensen :
Application No. 09/776,498 : DECISION ON PETITION
Filed: February 5, 2001 :
Attorney Docket No. 8025P001 :

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed February 26, 2008, to revive the above-identified application. Alternatively, petitioner requests consideration under the provisions of 37 CFR 1.137(b).

The petition under 37 CFR 1.137(a) is **DISMISSED**.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (3).

Petitioner states that "Applicant timely filed a response to the final Office action within two months from the mailing date of the final Office action, but did not receive an Advisory Action until after the statutory period". Petitioner further states that, because the Advisory Action was mailed after the six month statutory period for reply, Applicant was prevented from taking further action since it could not be determined what action was appropriate until receipt of the Advisory Action. As a result, the present petition was filed.

Petitioner's argument is not persuasive. A review of the record shows that a final Office action was mailed on April 20, 2007. In response, an amendment was timely filed on June 6, 2007. On June 7, 2007, a telephonic Interview was conducted between Steven Laut and the Examiner, Naresh Vig, indicating that an appropriate response to the Office action mailed April 20, 2007 will be filed to overcome the prior art. On June 21, 2007, a Statement of the Examiner Interview was filed by Steven Laut. In the interview, Mr. Laut stated that the claims would be amended and filed in a response to overcome the prior art rejections.

Clearly, the Interview Summary of June 7, 2007 and Statement of Examiner's Interview filed June 21, 2007, did not operate to avoid the above application from becoming abandoned. It was petitioner's responsibility to submit a proper response to the final Office action mailed on April 20, 2007, within the three month shortened statutory period or within the maximum statutory period for reply with an appropriate extension of time. Petitioner should not have allowed the period for reply to expire while awaiting further action from the Office. Since no further response was filed, the above application was properly held abandoned on July 21, 2007.

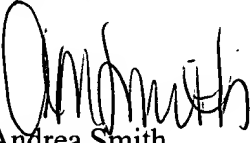
Since petitioner failed to meet the burden of 37 CFR 1.137(a), the petition filed on February 26, 2008 is being treated under 37 CFR 1.137(b), as requested.


The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114, with the \$405 filing fee; (2) the petition fee of \$770; and (3) an adequate statement of unintentional delay.

Accordingly, the petition under 37 CFR 1.137(b) is **GRANTED**.

The application is being referred to Technology Center Art Unit 3629, for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment previously submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.


Andrea Smith
Petitions Examiner
Office of Petitions


David Bucci
Petitions Examiner